

# Individual accountability = Individual Liability

- **Do you know and understand your responsibilities?**
- **Are you SM&CR compliance ready?**

## Background

The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have extended the Senior Manager and Certification Regime (SM&CR) to all regulated financial services firms, issuing their near finalised rules in July of this year. While all other firms will be subject to the new regime from 9th December 2019, regulated insurance organisations are required to comply with the new rules at the earlier date of 10th December 2018.

Previously applying only to Banks since March 2016, the new SM&CR regime supersedes the Approved Persons Regime. SM&CR will codify the responsibilities of the most senior individuals within a firm (the Senior Managers). They will be subject to the "duty of responsibility" and be required to demonstrate that they have taken "reasonable steps" to prevent, detect and stop a compliance breach from occurring. Senior Managers must be able to demonstrate a clear and comprehensive governance approach on how they manage their functions and responsibilities.

## Senior Manager accountability is not UK specific! The global focus

The increased focus on individual accountability is not UK specific. Following on from the recommendations of the Global Financial Stability Committee, competent authorities globally are committed to improving standards by which to hold individuals accountable.

In short, there is no escaping individual liability.

The Central Bank of Ireland recently announced an SM&CR equivalent regime – Senior Executive

Accountability Regime (SEAR) – to bring about similar standards which will apply to all Irish regulated financial institutions including Irish domiciled funds. Similarly, in Luxembourg, the Commission de Surveillance du Secteur Financier (CSSF) is also focused on bringing about enhanced conduct standards and increased accountability principles. Regulators alike consider that "a lack of individual accountability is a key driver of misconduct".

## How to prepare

Proactive preparation of your SM&CR strategy is key. Firms will need to identify individuals in "significant harm functions" (Certified Persons) and certify annually that they are "fit and proper". All staff within a firm, apart from ancillary staff, will be subjected to the new Conduct Rules.

## SM&CR changes and their implications

Compliance with the new rules will require firms to act now to build, review and revamp their existing compliance frameworks, systems, controls and governance arrangements, and design new, fit-for-purpose internal reporting mechanisms and processes. The FCA views SM&CR as a game-changer and as a means of driving cultural change. Its main aim is to make Senior Managers more responsible and accountable for their decisions and actions. Non-compliance could result in individuals facing FCA enforcement action and potential criminal charges.

## Effective compliance dates

While insurance companies should be well on their way to completing their programmes in time for the 10th December 2018, other financial services companies should be kicking off their own programmes ahead of the 9th December 2019 deadline. There's a lot of work to get through!

## In your preparation for SM&CR, also consider:

The role of HR and the required training to ensure each Senior Manager and member of staff understands their respective responsibilities and conduct rules.

## What do I need to do now?

- Prepare your SM&CR strategy, including a review of roles and responsibilities and their allocation to the right individuals.
- Informing and training Senior Managers on their individual accountabilities.
- Understand and communicate what is meant by reasonable steps.
- Record keeping and SM&CR governance review.

## How can Xcina help you?

Project management of SM&CR implementation from start to finish providing support in the execution and delivery of your SM&CR programme, enabling you to meet your ongoing compliance obligations.

We can help you navigate this important regulatory change by engaging in any of the phases of your SM&CR programme:

- Perform an initial gap analysis of your firm's SM&CR readiness and governance arrangements, providing you with a summary of the status of your SM&CR programme, pinpointing areas which are falling short of meeting the new rules and recommending improvements.
- Design your SM&CR implementation programme which will entail helping you design new information reporting processes and controls covering all bases including governance frameworks, IT, HR, legal and regulatory to embed into your existing governance structure.
- Provide ongoing support by reviewing draft documents and carrying out assurance and operational effectiveness reviews of the SM&CR programme. Are you meeting your continuing compliance obligations under SM&CR?
- We have a very experienced, vibrant and dynamic team comprising of ex-regulators, industry practitioners and seasoned consultants. We are also at the forefront of technological innovation in financial services and this, coupled with our deep industry knowledge, positions us well to serve all your needs through our service offerings.

## SM&CR Overview

The Senior Manager Regime (SMR)	Certification Regime	Conduct Rules
<ul style="list-style-type: none"><li>• Senior Manager Function (SMF) replaces Significant Influence Function.</li><li>• SMF holder = Senior Manager.</li><li>• SMF requires approval by FCA.</li><li>• Criminal records checks and regulatory references.</li><li>• Prescribed Responsibilities and Statement of Responsibilities.</li><li>• Duty of Responsibility and "reasonable-steps".</li><li>• Responsibilities Map.</li><li>• Handover procedures.</li></ul>	<ul style="list-style-type: none"><li>• Non-SMFs performing regulated functions.</li><li>• "Material risk takers" who can cause "significant harm".</li><li>• Pre-approval by FCA not required.</li><li>• Annual fit and proper certification.</li><li>• Background checks and training.</li></ul>	<ul style="list-style-type: none"><li>• Tier 1 rules apply to all staff (excludes ancillary staff).</li><li>• Tier 2 rules apply only to Senior Managers.</li><li>• Breaches management.</li></ul>